

REMARKS

This is a Response to the Office Action mailed June 26, 2008, setting forth a restriction requirement and requirement for election of species. The Examiner identified six allegedly distinct groups of claims: Group I, claims 1-11, drawn to a surgical stapler with a cartridge and anvil; Group II, claims 12-16, drawn to an end effector with pivotable jaw members; Group III, claims 17, 32-52, drawn to a robotic system; Group IV, claims 18-29, 53-68, drawn to a loading unit for use with a surgical instrument; Group V, claims 30, 31, drawn to a MEMS device and control and Group VI, claim 69, drawn to a surgical instrument with juxtaposable jaws.

Applicants provisionally elect to prosecute the claims of Group I, claims 1-11. The remaining claims consisting of Group II, claims 12-16; Group III, claims 17, 32-52; Group IV, claims 18-29, 53-68; Group V, claims 30, 31 and Group VI, claim 69 are withdrawn from consideration without prejudice to continue prosecution of the subject matter in a subsequent application.

Despite the provisional elections, applicants traverse the restriction requirement and requirement for election of species. It is respectfully submitted that the Examiner should reconsider the restriction requirement in view of the following. The separate classification of the subject matter under the classification system of the United States Patent and Trademark Office is not conclusive proof of divisibility. Further, under M.P.E.P. §803, the entire application must be examined as a whole when there would not be a serious burden on the Examiner if restriction were not required. The fields of search are believed to be co-extensive for the two groups identified by the Examiner.

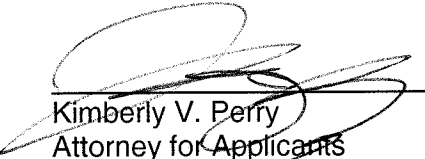
Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, the Examiner is respectfully requested to contact Applicants' undersigned attorney at the telephone number indicated below.

It is believed that no fee is due for entry of the present amendment, however, if it is determined that a fee is required for entry of the present amendment, the Commissioner is hereby authorized to charge such fee to Deposit Account No. 21-0550 in the name of United States Surgical Corp.

Also, in the event any extensions of time for responding are required for the pending application, please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,

Dated: July 17, 2008


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